



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30 -80
<b>Regulation title</b>	Methods and Standards for Establishing Payment Rates- Other Types of Care Fee for Service Reimbursement
<b>Action title</b>	Assurance of Public/Private Reimbursement for Hearing Aid Services
<b>Date this document prepared</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

This regulatory action is intended to promulgate a federally-required assurance statement regarding hearing aids services for children under the Medicaid Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program. Although the Department of Medical Assistance Services (DMAS) pays private and public providers the same for this service, the current regulations do not specifically state that the reimbursement methodology is the same for private versus governmental providers. The Centers for Medicare and Medicaid Services (CMS) required that this statement be added to Virginia's State Plan for Medical Assistance.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

I hereby approve the foregoing Regulatory Review Summary with the attached amended State Plan pages Reimbursement of Hearing Aids Services for Children (12VAC30-80-95) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Patrick W. Finnerty, Director  
Dept. of Medical Assistance Services

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

DMAS is permitted by the *Social Security Act* § 1902(a) and the enabling regulations at 42 CFR Part 440 to establish limits on its covered services.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of this fast track action is to incorporate into the Virginia Administrative Code specific assurance language that was required by the CMS. This action is not expected to have any impact on the health, safety, or welfare of citizens of the Commonwealth or Medicaid recipients. CMS required this specific language to be added to the State Plan during its amendment approval process. In order to maintain consistent language between the State Plan and the Virginia Administrative Code (VAC), this federally required language must now be added to the VAC.

### Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

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This rulemaking action is expected to be noncontroversial because it is making no difference in the reimbursement methodology or limitations on this covered service. The language being added to the State Plan is merely a federally required assurance that DMAS pays both public and private providers via the same methodology.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

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The section of the State Plan for Medical Assistance that is affected by this action is Methods and Standards for Establishing Payment Rates-Other Types of Care: Fee for Service Hearing Aids (under EPSDT) (12 VAC 30-80-95).

Virginia regulations (12 VAC 30-50-130), consistent with the Omnibus Budget Reconciliation Act of 1989, and federal regulations (42 CFR §440.40), require medical and mental health screenings and services through EPSDT for Medicaid eligible individuals under 21 years of age. When a provider recognizes a medical or mental health condition, regulations require that medically necessary measures to correct or ameliorate the condition be provided, whether or not such measures are covered under the Medicaid State Plan. The EPSDT program in Virginia's Medicaid State Plan has always expressly covered "hearing services," however, prior to addition of a specific reference to 'hearing aids', it did not specifically mention this covered service. Virginia's coverage for children's hearing aids is mandated through federal requirements found in § 1905(r)(4)(B) of the Social Security Act, which requires hearing aids to be included in EPSDT hearing services.

When Virginia sought federal approval of the addition of a specific reference to covered hearing aids, CMS required the addition of the language being added by this action. The new language being added by this action merely provides the assurance that DMAS does not differentiate in its reimbursement methodology between public and private providers of this service.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
  - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
  - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

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There are no advantages or disadvantages to either the public or Medicaid recipients in this action. The only advantage to the agency in this action is that it permits the agency to continue to maintain consistency between its VAC language and the State Plan for Medical Assistance.

## Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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This action is not more restrictive than federal requirements but conforms to them.

## Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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There are no particular localities that are affected by this action as it applies uniformly statewide.

## Regulatory flexibility analysis

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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This action will have no impact, adverse or otherwise, on any businesses in the Commonwealth.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	None
<b>Projected cost of the regulation on localities</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Licensed Hearing Aid Specialists
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are approximately 520 Licensed Hearing Aid Specialists in Virginia, many of whom are presumed to be owners or employees of small businesses. However, since this action is not expected to make any difference in how much these providers are paid or how they file their claims, it will not make any difference to these small businesses.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	None

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

No alternatives can be considered because the agency’s federal funding agency, CMS, specifically required the addition of this assurance statement to the State Plan for Medical Assistance.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
12VAC30-80-95		Section provides for the specific coverage of hearing aids for children under the EPSDT program.	New text provides the assurance that DMAS does not differentiate in its reimbursement methodology between public and private providers.